IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Surendra Senwar. Versus The Rajasthan Rajya Vidhyut Prasaran Nigam Ltd. & ors.

S.B. Civil Writ Petition No. 2495/2007

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Date of Order: May 07, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Pradeep Choudhary, for the petitioner.
Mr. M.S. Singhvi and Mr. Ravi Bhansali, for the respondents.

BY THE COURT:
Reportable.

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to treat him eligible for appointment on the post of Feeder Manager in pursuance of the posts advertised by the respondents vide Annx.5 by providing him relaxation of 10% marks and to declare illegal Clause (2) of the advertisement Annx.5 providing educational qualification for the post in question requiring aggregate 70% marks for the candidates possessing Graduation Degree in Engineer (Electrical), i.e. B.E. (Electrical).

The facts and circumstances giving rise to the instant writ petition are that the respondent Rajasthan Rajya Vidhyut

Prasaran Nigam Ltd. (for short, "the Nigam" hereinafter), which is a Government of Rajasthan Undertaking, advertised to fill-up the posts of Feeder Managers vide advertisement Annx.5 dated 16-2-2007 prescribing the minimum qualification for appointment on the post of Feeder Manager that a person having the Degree of B.E. (Electrical) from any recognized university or institution with 70% aggregate marks, or a Degree of AMIE (Electrical) with 60% aggregate marks. Clause 2(2) of the advertisement Annx.5 further provides that the persons who are working with the respondent Nigam, while working with Prasaran & distribution work of the Nigam on the post of Junior Engineer shall be extended the relaxation of 10% marks in the minimum requisite percentage of marks as advertised vide Annx.5. The petitioner possesses the Degree of B.E. (Electrical) from Karnataka University, Dharwar securing 60.35% aggregate marks vide Annx.1. Considering himself to be eligible for the post as advertised vide Annx.5, he applied for the same, however falling short of the requisite minimum percentage of aggregate marks obtained by him in the Degree of B.E. (Electrical) vide Annx.1, he seeks to challenge the condition prescribing the minimum educational qualification of having 70% aggregate marks in B.E. (Electrical) as discriminatory and claims relaxation of 10% marks, has filed the instant writ petition.

A reply to the writ petition has been filed by the

respondents.

It is contended by the learned counsel for the petitioner that the petitioner possesses the Degree of B.E. (Electrical) from Karnataka University, Dharwar with 60.35% aggregate marks Vide Annx.1 and thereafter on an advertisement issued by the respondents, he applied for the post of Junior Engineer on contract basis, appeared in the written test, declared successful, called for interview, stood in merit and, therefore, after verification of the documents, he was given appointment on the post of Junior Engineer on contract basis vide order Annx.2 dated 21-7-2004 and, therefore, learned counsel for the petitioner submits that the petitioner is entitled for relaxation of 10% marks under Clause 2 (2) of the advertisement Annx.5 which provides that the Junior Engineers who have been working in Prasaran & Distribution of Nigam shall be extended the relaxation of 10% marks. He further contended that providing minimum qualification of having 70% aggregate marks in the Degree of B.E. (Electrical) or 60% aggregate marks for the candidates possessing the Degree of AMIE (Electrical) is discriminatory to the extent that the B.E. Degree in Engineering and AMIE are the equivalent qualification and, therefore, for two Degrees which are equivalent to each other, providing different aggregate marks is illegal.

Mr. M.S. Singhvi, learned counsel for the respondents

submits that providing two sets of aggregate percentage of marks for the candidates possessing the Degree in B.E. (Electrical) and for those who possesses the Degree of AMIE (Electrical) cannot be said to be discriminatory for the reason that the assessment of marks in AMIE is comparatively tougher vis-a-vis the marks awarded in the Degree of B.E. and not only this, for AMIE Degree, a person should be Diploma-holder in Engineering and thereafter he can undergo the AMIE, which is two years' course. A person who comes out with AMIE has five years' instructions in Electrical Engineering vis-a-vis a person holding the Degree of B.E. (Electrical) which is awarded after four years' instructions and, therefore, both the Degrees cannot be said to be at par and similar and, thus, the answering respondents examined the issue by the Experts' Committee headed by the Chairman cum Managing Director of the Nigam along with the Secretary, Energy Department of Government of Rajasthan and Chairmen Cum Managing Directors of four electrical companies, namely Jodhpur Discom, Jaipur Discom, Ajmer Discom and Rajasthan Rajya Vidhyut Utpadan Nigam Ltd. and, therefore, according to the learned counsel for the respondents, providing different percentage of aggregate marks for the Degree of B.E. (Electrical) and AMIE (Electrical) is rational. So far as claiming relaxation of 10% marks being working with the respondent Nigam on the post of Junior

Engineer on contract basis is concerned, learned counsel for the respondents submits that this relaxation has been provided for those candidates who have been regularly appointed and serving with the respondent Nigam on the post of Junior Engineer, and not for the persons like the petitioner who has been engaged on the post of Junior Engineer on contract basis. The petitioner is not an employee of the Nigam as he has not been appointed on regular basis but he has been engaged on contract basis for a fixed term and, therefore, the petitioner, being not an employee of the Nigam, cannot be termed to be a working employee of the respondent Nigam and is not entitled for relaxation of 10% marks. Learned counsel for the respondent has relied on the decisions of the Hon'ble Supreme Court in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & ors., (2006) 2 SCC 482; State of Rajasthan & Anr. Vs. Kulwant Kaur, (2006) 9 SCC 564; Sanjay Kumar Manjul Vs. Chairman, UPSC & ors., (2006) 8 SCC 42; Sudershan Singh Vs. Harinder Mohan Sharma & ors., (2003) 12 SCC 47; J. Ranga Swamy Vs. Government of Andhra Pradesh & ors., AIR 1990 SC 535; and a decision of this Court in Dr. Rajesh Sharma & Anr. Vs. State of Rajasthan, 2003 WLC (UC) 116.

I have heard learned counsel for the parties and given my thoughtful consideration to the rival submissions made by them.

It is an admitted fact that the petitioner possessses the Degree of B.E. (Electrical) from Karnataka University, Dharwar securing 60.35% aggregate marks therein vide Annx.1. It is also an admitted fact that the petitioner was engaged by the respondent Nigam on the post of Junior Engineer on contract basis for a period of two years on a consolidated salary vide Annx.2 dated 21-7-2004. The order Annx.2 in clear terms provides that the petitioner and 35 other Junior Engineers (Electrical) were engaged for working at difference places shown against their names in the order on contract basis for a consolidated payment, which makes it clear that the period of contract is for two years and a sum of Rs.6500/- as consolidated payment shall be made to the Junior Engineer engaged on contract basis and except this amount, nothing will be payable; however it was made clear that out of the consolidated payment, contribution towards Employees Provided Fund shall be deducted according to the Rules. Apart from other conditions, there is a mention in Annx.2 that the persons engaged on contract basis, during the contract period, are required to work with Jodhpur Vidhyut Vitran Nigam Ltd. and for the contract period, they will not be subjected to transfer and if the work is found unsatisfactory, without notice and even before expiry of the contract period, the contract may be terminated. Therefore, whether the engagement of the petitioner and 35 other junior

engineers vide Annx.2 is a regular employment on the post of Junior Engineers (Electrical) or not, the question has to be examined in terms of the engagement order Annx.2.

It is true that the petitioner has been working in pursuance of his engagement on contract basis on a consolidated payment for a fixed term vide Annx.2, but merely because he has been working on contract basis, whether he can be termed to be an "employee" of the Nigam; whether such a contract creates relationship of "employee" and "employer" between the petitioner and the respondents entitling him to claim relaxation of 10% marks in aggregate.

In reply to the writ petition, the respondents categorically stated that the engagement of the petitioner as Junior Engineer (Electrical) was purely on contract basis for a fixed term and on consolidated payment and as such the relationship of "master and servant" or "employee and employer" has not been created, as also the person engaged on contract basis does not fall in the category of a regular employee appointed by the respondent Nigam. It has further been stated that by engaging the petitioner on contract basis, he does not become a member of "service" of the respondent Nigam. So far as the qualification of Degree in B.E. (Electrical) and Degree of AMIE are concerned, it has been stated that the assessment of marks in AMIE is comparative tougher than that in the Degree of

B.E. (Electrical) and a person with Diploma in Engineering is eligible for obtaining the AMIE Degree which is two years' course and thus a person possessing the Degree of AMIE has five years' instructions in engineering, whereas a person obtaining the Degree of B.E. is to undergo four years' instructions and, therefore, the persons having five years' instructions in AMIE in Electrical Engineering is on a higher footing and cannot be equated with the Degree in B.E. (Electrical) and, therefore, the petitioner, having the Degree of B.E. (Electrical) cannot claim equality. So far as fixing the cut off aggregate marks of 60% for AMIE Degree making eligible the persons holding this Degree and 70% aggregate marks in the Degree of B.E. (Electrical) are concerned, according to the learned counsel for the respondents, the same is based on rational classification having a reasonable nexus. It has further been stated that the decision to this effect has been taken by the Experts Committee headed by the Chairman cum Managing Director of the respondent Nigam along with the Secretary, Energy Department of the Government of Rajasthan and the Chairmen cum Managing Directors of four electric companies, i.e. Jodhpur Discom, Jaipur Discom, Ajmer Discom and Rajasthan Rajya Vidhyut Vitran Nigam Limited, who are coming from the Engineer Branches and they have well-versed with the engineering and, therefore, laying down different percentage of aggregate marks for the

Degree-holders of AMIE (Electrical) and B.E. (Electrical) cannot be said to be discriminatory or irrational as the decision to this effect has been taken by the Experts Committee and, therefore, it is not open for the Courts to interfere with such a decision of the Experts Committee.

In U.P.S.C. Vs. Girish Jayanti Lal Vaghela & ors. (supra), while considering the similar facts, the Hon'ble Supreme Court held that the respondents therein cannot be said to be Government servant as they were working on contract basis and, therefore, they were not eligible for any relaxation in upper age limit. In that case, admittedly the respondents therein were engaged or hired on contract to work as Drugs Inspector for a period of six months from the date of joining till the candidates selected by the Union Public Service Commission join the duty, whichever is earlier. The contract further stipulated that even if a regularly selected candidate does not join, the respondents would stand relieved on expiry of six months. In view of the case law, the Hon'ble Supreme Court held that the respondents did not have any right to continue as Drug Inspectors after expiry of six months' period, for which they were appointed. While considering the relationship of "employer and employee" and the contract of service (as also the contract for service), the Hon'ble Apex Court noticed that the House of Lords, in Cassidy Vs. Ministry of Health, (1951) 1 ALL

ER 574, laid down four indicia of contract of service, i.e. (a) the master's power of selection of his servant, (b) the master's responsibility of payment of wages or other remuneration; (c) the master's right of suspension or dismissal; and (d) the master's right to control the method of doing the work. It was also observed that a contract of service may still exists if some of these elements are absent altogether, or present only in an unusual form and that the principal requirement of a contract of service is the right of the master in some reasonable sense to control the method of doing the work, and that this factor of superintendence and control has always been treated as critical and decisive of the legal quality of the relationship.

While considering: whether a post is "service" or "employment", the Hon'ble Surpeme Court, in State of Assam Vs. Kanak Chandra Dutta, AIR 1967 SC 884, held as under:-

> "A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 2`0 and 311. The heading and the sub-heading of Part XIV and Chapter IU emphasise the element of service. There is a relationship of mater and servant between the State and a person (said to be) holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a

> relation between the State and the alleged holder of a post."

Similarly, while considering the relationship of "master and servant", a Constitution Bench of the Hon'ble Supreme Court in State of Gujarat Vs. Raman Lal Keshav Lal Soni, AIR 1984 SC 161, observed as under:-

> "We do not propose and indeed it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine and the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not."

In Sanjay Kumar Manjul Vs. Chairman, UPSC & ors. (supra), the Hon'ble Supreme Court held statutory authority is entitled to frame the statutory rules laying down the terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned which can take ultimate decision therefor. It was further held that it is well settled that the superior courts while exercising

their jurisdiction under Article 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post. The Apex Court further held that the court would normally be governed by the opinion of the experts in the field, particularly in the academic field.

In Tariq Islam Vs. Aligarh Muslim University, (2001) 8 SCC 546, the Hon'ble Supreme Court held as under:-

> "This Court stated that normally, it is wise and safe for the courts to leave the decision of academic matters to experts who are more familiar with the problems they face than the courts generally are. Area of interference by courts would be limited to whether the appointment made by the academic body had contravened any statutory or binding rule and while doing so, the court should show due regard to the opinion expressed by the experts and on whose recommendations the academic body had acted and not to treat such expert body as a quasi-judicial tribunal, deciding disputes referred to it for decision. Equivalence of a qualification pertains purely to an academic matter and courts would naturally hesitate to express a definite opinion, particularly, when it appears that the experts were satisfied that the equivalence has already been considered and declared by it."

In Sudershan Singh Vs. Harinder Mohan Sharma & ors. (supra), the Hon'ble Supreme Court, while examining the fulfilment of qualification prescribed by the Expert Body, the opinion of the experts body and the scope of judicial review on the opinion of the experts body, observed as under:-

> "we feel that the question as to whether the appellant Sudershan Singh fulfilled the required qualification for the job or not, was a question

> basically for consideration of the Expert committee which held the selection."

In J. Ranga Swamy Vs. Government of Andhra Pradesh & ors. (supra), while considering the relevancy and suitability of the prescribed qualification, the Hon'ble Apex Court held that it is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualification to be prescribed for the post in question. The Apex Court further held that the qualification prescribed for the posts, its relevancy and suitability are not to be considered and assessed by the courts and in case of any grievance in this respect, the Appropriate Authority may be moved for review of the prescribed qualification.

A Division Bench of this Court in Dr. Rajesh Sharma & Anr. Vs. The State of Rajasthan & ors. (supra) held as under:-

> "We are of the opinion that it is not the domain of the Court to examine as to whether the degree of M.Sc. (Med.) Bio-chemistry could be treated as a post graduate degree in Veterinary Science or Animal Husbandry or not. I is the job of the expert body and a purely academic exercise, upon which the courts are always reluctant to embark and should not embark. Once the qualification held by the appellant for the purpose of appointment on the post in question had been examined at more than one stages by the expert body at the level of the RPSC as also at the level of the Government, as has been mentioned in the earlier part of this judgment and it had been found that the qualification held by the appellant could be treated as post graduate degree in Veterinary Science or Animal Husbandry and onb that basis, after thorough examination of this issue at the level of the expert body, the appellant was

> consciously considered to be eligible and found suitable. There was no scope for the learned Single Judge to sit as an appellate body over the decision of an expert body and to hold that the appellant did not possess the requisite qualification for the purpose of appointment in question."

The Division Bench further held that the view taken by the learned Single Judge cannot be sustained and the decision of the expert body as had been the Rajasthan Public Service Commission and the Government must be allowed to prevail.

The case in hand, on being examined keeping in view the decisions of the Hon'ble Supreme Court and a decision of Division Bench of this Court referred here-in-above, in my view, the petitioner has failed to establish the relationship of "employee and employer" or "master and servant" between him and the respondent Nigam. The petitioner has been admittedly engaged by the respondents purely on contract basis for a fixed term of two years on a consolidated payment as Junior Engineer (Electrical) entitling him nothing else other than as per the terms of engagement order Annx.2 and, therefore, in view of the decision of the Hon'ble Supreme Court in UPSC Vs. Girish Jayanti Lal Vaghela & ors. (supra), the petitioner cannot be said to be an employee of the respondents as he is working on contract basis and as such not eligible for relaxation of 10% marks as provided under Clause 2 (2) of the advertisement Annx.5. Keeping in view the various decisions of the Hon'ble Supreme Court and a

Division Bench Decision of this Court referred here-in-above, it is not open for the higher courts to interfere with the conclusions arrived at by the High Level Committee/Expert Body prescribing the qualification and minimum percentage of aggregate marks. So far as question of equivalence of AMIE (Electrical) and the Degree of B.E. (Electrical) is concerned, the matter has been examined by the High Level Committee of experts in the field and more so the assessment of marks in AMIE is comparatively tougher vis-a-vis the marks awarded while granting the Decree of B.E. as also the fact that the holder of Degree AMIE (Electrical) is having five years' instructions, three years of Diploma and two years in AMIE. Therefore, in my view, it cannot be said to be irrational or discriminatory; on the contrary, the conclusion arrived at by the Expert Body has a rational nexus with the object sought to be achieved.

In view of the aforesaid discussion, I do not find any merit in the writ petition and it is dismissed accordingly. There shall be no order as to costs.

(H.R. PANWAR), J.

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